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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TODD R.G. HILL,

Plaintiff,

v.

THE BOARD OF DIRECTORS, OFFICERS AND AGENTS AND INDIVIDUALS OF THE PEOPLES COLLEGE OF LAW, et al.,

Defendants.

Case No.: 2:23-cv-01298-JLS (BFM)

STATE BAR DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO AMEND THIRD AMENDED COMPLAINT

DATE:	Under Submission
TIME:	N/A
COURTROOM:	780, 7th Floor
JUDGE:	Hon. Brianna Fuller Mircheff

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I. INTRODUCTION

After initiating this lawsuit over a year and a half ago, Plaintiff Todd Hill ("Plaintiff") has unsuccessfully attempted to assert a variety of claims against dozens of defendants including State Bar officials and individuals affiliated with his former law school, the Peoples College of Law ("PCL").[1] At this juncture, despite having multiple opportunities to remedy these issues, each of Plaintiff's prior complaints have been dismissed for failure to comply with Federal Rule of Civil Procedure 8 and various other pleading deficiencies. *See* Dkts. 37, 45, 145. Moreover, for the reasons explained in the State Bar Defendants' pending motion to dismiss, the same pleading deficiencies persist in Plaintiff's Third Amended Complaint ("TAC"). *See* Dkt. 172. Plaintiff's instant motion to amend his TAC and file a Fourth Amended Complaint ("4AC") is nothing more than an eleventh-hour attempt to salvage meritless claims that this Court has already dismissed. *See* Dkts. 163, 164. Because the 4AC fails to cure the fatal deficiencies with Plaintiff's claims, and for the reasons explained below, the Court should deny Plaintiff's motion to amend his TAC and deny Plaintiff leave to file a 4AC.

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 15(a)(1), a party may amend its pleading once as a matter of course within certain designated time limits. Fed. R. Civ. P. 15(a)(1). "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). "Leave need not be granted where the amendment of the complaint would cause the opposing party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue delay." *Ascon Properties, Inc. v. Mobil Oil Co*., 866 F.2d 1149, 1160 (9th Cir. 1989). "The district

[1] The State Bar Defendants named in the caption of the proposed 4AC are the State Bar of California, Louisa Ayrapetyan, Natalie Leonard, Leah Wilson, Brandon Stallings, Ruben Duran, Hailyn Chen, Audrey Ching, Melanie Shelby, Arnold Sowell, Jr., Mark Toney, Paul Kramer; Jean Krasilnikoff, Ellin Davtyan, George Cardona, and Enrique Zuniga.

court's discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint." *Id*. at 1160. Amendment is futile if no set of facts can be proven under the amendment that could constitute a valid claim or defense. *Miller v. Rykoff-Sexton, Inc*., 845 F.2d 209, 214 (9th Cir. 1998). "Futility of amendment can, by itself, justify the denial of a motion for leave to amend." *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995); *see also Newland v. Dalton*, 81 F.3d 904, 907 (9th Cir. 1996) (holding that "district courts need not accommodate futile amendments").

Although a pro se party's pleadings should be construed liberally, "*pro se* litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record." *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986). Additionally, "a pro se litigant is not excused from knowing the most basic pleading requirements." *American Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1107–08 (9th Cir. 2000).

III. ARGUMENT

A. Plaintiff's Motion Should Be Denied for Failure to Comply with Local Rule 7-3

As a threshold matter, Plaintiff's motion should be denied based on Plaintiff's failure to meet and confer with the State Bar Defendants prior to filing the motion.

Local Rule 7-3 provides that:

> In all cases not listed as exempt in L.R. 16-12, and except in connection with discovery motions . . . and applications under F. R. Civ. P. 65 for temporary restraining orders or preliminary injunctions, counsel contemplating the filing of any motion must first contact opposing counsel to discuss thoroughly, preferably in person, the substance of the contemplated motion and any potential resolution. The conference must take place at least 7 days prior to the filing of the motion.

L.R. 7-3.

If the parties are unable to reach a resolution regarding the motion, the notice of motion must include the following statement: "This motion is made

following the conference of counsel pursuant to L.R. 7-3 which took place on (date)." *Id.*

Here, as described in the State Bar Defendants' motion to dismiss Plaintiff's TAC, the Court previously dismissed Plaintiff's initial complaint, First Amended Complaint, and Second Amended Complaint for various pleading deficiencies. *See* Dkts. 1, 37, 45, 55, 145. The Court then granted Plaintiff leave to "file a Third Amended Complaint remedying the deficiencies detailed herein." *See* Dkts. 132, 145. Plaintiff filed a TAC, but before briefing closed for the TAC and while certain defendants' motions to dismiss the TAC were already pending, Plaintiff filed the instant motion seeking leave to file a 4AC. *See* Dkts. 163, 164. Plaintiff did not meet and confer with the State Bar Defendants prior to filing this specific motion, though the deficiencies with his TAC were exhaustively discussed as part of the State Bar's meet and confer efforts on its motion to dismiss. *Id*. Instead, Plaintiff chose to seek leave to file yet another amended pleading (which, as described below, asserts futile and meritless claims) while forcing the State Bar Defendants to respond on the merits to his TAC.

Because Plaintiff failed to adequately meet and confer with the State Bar Defendants prior to filing the motion, his motion should be denied on that basis alone.

B. Plaintiff's Proposed 4AC Asserts Meritless Claims, Continues to Violate Rule 8, and Permitting Further Amendment Would be Futile

Even if Plaintiff had complied with Local Rule 7-3, which he did not, Plaintiff's motion should be denied because Plaintiff's proposed 4AC asserts meritless claims and continues to violate Rule 8, such that further amendment would be futile. The crux of Plaintiff's allegations in the 4AC is again that the State Bar failed to adequately regulate the PCL. *See generally* 4AC. The 4AC also asserts the same eight claims as in Plaintiff's TAC, albeit with minor changes made to the defendants that are named as to each cause of action. *Id*. As explained below, these changes do not make Plaintiff's claims viable,

and for certain claims, create additional bases for why the claims fail. Where, as here, Plaintiff has filed multiple pleadings but is still unable to state a claim, further amendment would be futile. *See Bonin*, 59 F.3d at 845 ("Futility of amendment can, by itself, justify the denial of a motion for leave to amend.").

1. Plaintiff's Proposed 4AC Continues to Violate Rule 8

Plaintiff's proposed 4AC continues to violate Federal Rule of Civil Procedure 8, despite the Court having already dismissed Plaintiff's complaint on three occasions for failure to comply with Rule 8. Plaintiff continues to fail to assert any factual allegations about how any State Bar Defendant violated the law or how Plaintiff was injured by their conduct, and continues to lump defendants together and reincorporate all prior paragraphs throughout his claims. *See, e.g*, 4AC ¶¶ 137, 138, 164, 165, 174, 176, 188, 192, 204, 212, 224, 225, 248, 256, 259, 268. Additionally, much like Plaintiff's TAC, the proposed 4AC continues to not assert any claims against individual State Bar Defendants Shelby, Sowell, Toney, Krasilnikoff and Cardona, despite naming these individuals in the caption of the 4AC. *See generally* 4AC. Where, as here, "a litigant knowingly and repeatedly refuses to conform his pleadings to the requirements of the Federal Rules, it is reasonable to conclude that the litigant simply cannot state a claim." *Knapp v. Hogan*, 738 F.3d 1106, 1110 (9th Cir. 2013).

Accordingly, Plaintiff's proposed 4AC fails to correct the Rule 8 violations, and, as such, further amendment would be futile.

2. Amendment to Plaintiff's Proposed Equal Protection Claim (First Cause of Action) Is Futile Because Plaintiff Cannot Assert a Section 1983 Claim Against the State Bar and Fails to State a Claim Against the Individual State Bar Defendants

Plaintiff's proposed first cause of action asserts a Fourteenth Amendment Equal Protection Clause violation against the State Bar as an entity and various individual State Bar Defendants. *See* 4AC ¶¶ 137–63. Apart from adding the State Bar as a defendant, the 4AC makes no material change to this cause of action. *Id*. Plaintiff's claim against the State Bar as an entity and individual State Bar Defendants fails for multiple reasons.

First, the Court has already dismissed this cause of action as to the State Bar without leave to amend based on sovereign immunity. *See* Dkt. 132 at 17–23, Dkt. 145 at 2. Second, Plaintiff's claim against the State Bar as an entity fails because the State Bar is not a person subject to suit under section 1983.[2] *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) ("[N]either a State nor its officials acting in their official capacities are 'persons' under § 1983."); *Bennett v. People of State of Cal.*, 406 F.2d 36, 39 (9th Cir. 1969) (holding that state agencies "are not 'persons' within the meaning of the Civil Rights Act.").

Third, as detailed in the State Bar Defendants' motion to dismiss the TAC, Plaintiff's claim against the individual State Bar Defendants fails because they are entitled to qualified immunity as to Plaintiff's claims of alleged race or sex-based discrimination that he suffered while a student at PCL, and Plaintiff does not plausibly allege intentional discrimination by any individual State Bar Defendant. *See* Dkt. 172 at 21–25. As made plain in the 4AC (and Plaintiff's prior pleadings), Plaintiff does not allege intentional discrimination by the State Bar Defendants, and instead alleges he suffered harm based on their purported collective "inaction." *See* 4AC ¶¶ 144, 145, 157.

Accordingly, Plaintiff's first cause of action in the 4AC would fail again, and any further amendment would be futile.

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[2] As discussed in the State Bar Defendants' motion to dismiss Plaintiff's TAC, Plaintiff cannot avail himself of the *Ex parte Young* exception to Eleventh Amendment immunity to name State Bar officials in their official capacity because the relief he seeks is plainly retrospective. *See* Dkt. 172 at 20–21. Nor does the *Ex parte Young* exception authorize suit against state entities. *Nat'l Audubon Soc'y, Inc. v. Davis,* 307 F.3d 835, 847 (9th Cir. 2002), *opinion amended on denial of reh'g*, 312 F.3d 416 (9th Cir. 2002) (state agency defendants were immune from suit because they are state entities, not individual state officers).

3. Amendment to Plaintiff's Title VI Claim (Third Cause of Action) Is Futile Because Plaintiff Does Not Allege Receipt of Federal Funds, Intentional Discrimination, or an Equal Protection Violation

Plaintiff's third cause of action in the proposed 4AC asserts a claim of racial discrimination under Title VI of the Civil Rights Act of 1964 against the State Bar as an entity but makes no material change to the same cause of action as asserted in the TAC. *See* 4AC ¶¶ 174–87. His addition of the State Bar as a defendant does not cure the deficiencies with his Title VI claim because Plaintiff still does not allege intentional discrimination by the State Bar. Moreover, Plaintiff's decision to name the State Bar and omit any individual State Bar Defendants is a tacit acknowledgment that Plaintiff cannot bring a Title VI claim against individuals. *See* Dkt. 172 at 25–26.

As a threshold matter, to assert a Title VI claim against a state agency, a plaintiff must plausibly allege facts demonstrating receipt of federal funds. *See* 42 U.S.C. § 2000d; *Castle v. Eurofresh, Inc.*, 731 F.3d 901, 909 (9th Cir. 2013) (affirming dismissal of Rehabilitation Act claim with parallel federal funding requirement where plaintiff failed to allege facts plausibly demonstrating defendant's receipt of federal funds); *West v. City & Cnty. of San Francisco*, 2022 WL 1556415, at *11 (N.D. Cal. May 17, 2022) (factual allegation that defendant received $3 million in federal funds for emergency shelter services sufficient to assert Title VI claim). The 4AC alleges no such facts here and instead merely repeats legal conclusions. *See* 4AC ¶¶ 148, 149, 178, 264. Plaintiff's threadbare allegations are especially dubious given that the State Bar's funding largely comes from admission fees and licensing fees. *See* Cal. Bus. & Prof. Code §§ 6063, 6140, 6144; *Kohn v. State Bar of California*, 87 F.4th 1021, 1035–36 (9th Cir. 2023) (noting that the State Bar is authorized by the legislature to raise its own funds).

In addition, a party seeking "judicial enforcement of Title VI's nondiscrimination protections must prove intentional discrimination." *Yu v. Idaho State Univ.*, 15 F.4th 1236, 1242 (9th Cir. 2021). Where, as here, Plaintiff does not allege intentional discrimination, only a failure to regulate (*see, e.g.*, 4AC ¶ 180), Plaintiff's Title VI claim

fails. *See* Dkt. 172 at 24–25 (citing *Shooter v. Arizona*, 4 F.4th 955, 960 (9th Cir. 2021); *Kentucky v. Graham*, 473 U.S. 159, 165 (1985); *Monteiro v. Tempe Union High Sch. Dist*., 158 F.3d 1022, 1026 (9th Cir. 1998)). Additionally, "Title VI . . . proscribe[s] only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment." *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 287 (1978). Plaintiff's Title VI claim fails for the additional reason that Plaintiff has not adequately alleged an Equal Protection violation, as discussed above. *See* Section III(B)(2), *supra*.

Accordingly, Plaintiff's third cause of action in the 4AC would fail again, and any further amendment would be futile.

4. Amendment to Plaintiff's RICO Claim (Fourth Cause of Action) Is Futile Because Plaintiff Still Does Not Allege the Elements of a RICO Claim

Plaintiff's fourth cause of action continues to assert a civil RICO claim against various individual State Bar Defendants and makes no material change from the same cause of action asserted in the TAC. *See* 4AC ¶¶ 188–223. As detailed in the State Bar Defendants' motion to dismiss the TAC, Plaintiff's RICO claim fails yet again because the 4AC merely restates the same threadbare allegations asserted in the TAC and does not plausibly allege a RICO enterprise or any facts demonstrating racketeering activity. *See* 4AC ¶¶ 188–223; Dkt. 172 at 26–28. Instead, the 4AC again alleges that the individual State Bar Defendants are somehow liable based on their inaction, rather than any direct involvement in a RICO enterprise. *See, e.g., id.* ¶ 196 (alleging the individual State Bar Defendants are liable for "failing to intervene). Nor does the 4AC include any factual allegations about the purported predicate acts of racketeering activity, when they were purportedly carried out, and which defendants are responsible. *See id*. ¶¶ 188–223.

Accordingly, Plaintiff's fourth cause of action in the 4AC would fail again, and any further amendment would be futile.

5. Amendment to Plaintiff's Title IX Claim (Eighth Cause of Action) Is Futile Because Plaintiff Fails to Allege Receipt of Federal Funds and Still Fails to State a Claim for Sex-Based Retaliation

Plaintiff's eighth cause of action asserts a violation of Title IX against the State Bar as an entity. *See* 4AC ¶¶ 256–67. Apart from naming the State Bar as a defendant and omitting the individual State Bar Defendants, the 4AC makes no material change to this cause of action as asserted in the TAC. *Id*.

As with his deficiencies regarding his Title IV claim, as a threshold matter, the 4AC fails to plausibly allege facts demonstrating receipt of federal funds for Plaintiff's Title IX claim. *See* Section III(B)(3), *supra*. Much like Title IV, Title IX only reaches entities that receive federal funds. *See* 20 U.S.C. § 1681, *et seq*.; Dkt. 172 at 28 (citing cases). The absence of these allegations from the 4AC is fatal to Plaintiff's Title IX claim. *See* 4AC ¶¶ 148, 149, 178, 264.

Additionally, as detailed in the State Bar Defendants' motion to dismiss the TAC (*see* Dkt. 172 at 28–29), Plaintiff's amendment to add the State Bar as a defendant for this claim is futile because a Title IX claim does not lie against an entity where "liability rests solely on principles of vicarious liability or constructive notice." *Gebser v. Lago Vista Indep. Sch. Dist*., 524 U.S. 274, 288 (1998); *see also Mansourian v. Regents of Univ. of California*, 602 F.3d 957, 966 (9th Cir. 2010) (damages are precluded for unintentional violations of Title IX). Title IX prohibits only intentional discrimination. *See Jackson v. Birmingham Bd. of Educ*., 544 U.S. 167, 178 (2005). In cases that do not involve the official policy of an entity, there is no damages remedy under Title IX unless an official who "has authority to address the alleged discrimination and to institute corrective measures" at the entity "has actual knowledge of discrimination in the recipient's programs and fails adequately to respond." *Gebser*, 524 U.S. at 290.

Here, just as with the TAC, the 4AC lacks any allegations of intentional discrimination, an official discriminatory policy of an entity, or an official's actual knowledge of discrimination and failure to adequately respond. *See generally* 4AC.

Instead, the 4AC alleges that a defendant associated with PCL authored and disseminated an unflattering letter about Plaintiff to the school community and Plaintiff speculates that the letter could have had the "implicit or explicit endorsement" of State Bar officials. *See* 4AC ¶ 261. Plaintiff's speculation alone does not establish a Title IX claim against the State Bar as an entity.

Accordingly, Plaintiff's eighth cause of action in the 4AC would fail again, and any further amendment would be futile.

6. Amendment to Plaintiff's State-Law Claims (Second, Sixth, and Seventh Causes of Action) Is Futile

Each of Plaintiff's state-law claims asserted in the 4AC (his second, sixth, and seventh causes of action) fails because, as outlined in the State Bar Defendants' motion to dismiss Plaintiff's TAC, Plaintiff still does not adequately allege compliance with the Government Claims Act. *See* Dkt. 172 at 29–31; 4AC ¶¶ 8, 88, 89, 260. This deficiency bars each of the state-law claims asserted in the 4AC.

Plaintiff's second cause of action for violation of the Unruh Civil Rights Act, California Civil Code section 51 is asserted against the State Bar as an entity. *See* 4AC ¶¶ 164–79. Apart from naming the State Bar as a defendant and omitting the individual State Bar Defendants, the 4AC makes no material change to this cause of action as asserted in the TAC. *Id*. As explained in the State Bar Defendants' motion to dismiss Plaintiff's TAC, this claim fails because the Unruh Act only prevents discrimination by business establishments and the State Bar is not a business establishment subject to the Act. *See* Dkt. 172 at 31.

Plaintiff's sixth and seventh causes of action for negligence, negligence per se, and negligent hiring, retention, and supervision are asserted against various individual State Bar Defendants. *See* 4AC ¶¶ 224–55. These causes of action are identical to the causes of action asserted in the TAC. *Id*. These claims continue to be premised on Plaintiff's belief that the individual State Bar Defendants failed to adequately regulate PCL. *Id*. As explained in the State Bar Defendants' motion to dismiss Plaintiff's TAC, these claims

fail because they are barred by numerous immunities set forth in the California Government Claims Act and because the 4AC does not allege a legal duty, breach, causation, or injury, or any cognizable special relationship between himself and State Bar Defendants that would give rise to any such duty. *See* Dkt. 172 at 31–32.

Accordingly, Plaintiff's second, sixth, and seventh causes of action in the 4AC are meritless and further amendment would be futile.[3]

7. Plaintiff's 4AC Fails for Additional Reasons

Plaintiff's proposed 4AC fails for additional reasons. As outlined in the State Bar Defendants' motion to dismiss Plaintiff's TAC, the 4AC continues to name various individual State Bar Defendants who are not proper defendants to this case. *See* Dkt. 172 at 33; 4AC ¶¶ 25–27, 29–32. The 4AC also continues to seek remedies that may not be awarded. *See* Dkt. 172 at 33–34; 4AC ¶¶ 268–83. Permitting further amendment of these ongoing deficiencies would be futile.

IV. CONCLUSION

For the reasons set forth above, Plaintiff's proposed 4AC asserts the same meritless claims as his TAC and fails to remedy the pleading deficiencies previously identified by the Court. Because amendment would be futile, Plaintiff's motion should be denied.

Dated: September 30, 2024

Respectfully submitted,

By: /s/ *JEAN KRASILNIKOFF*
JEAN KRASILNIKOFF
Assistant General Counsel

Attorneys for Defendants

[3] Plaintiff's proposed 4AC also continues to assert a "claim" for conspiracy against various individual State Bar Defendants. *See* 4AC ¶¶ 204–23. As explained in the State Bar Defendants' motion to dismiss Plaintiff's TAC, conspiracy is not a recognized cause of action under California law and Plaintiff's allegations are redundant of his other causes of action. *See* Dkt. 172 at 32.

Louisa Ayrapetyan; Natalie Leonard; Leah Wilson; Brandon Stallings; Ruben Duran; Hailyn Chen; Audrey Ching; Melanie Shelby; Arnold Sowell, Jr.; Mark Toney; Paul Kramer; Jean Krasilnikoff; Ellin Davtyan; George Cardona; Devan McFarland; Enrique Zuniga

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the State Bar Defendants, certifies that this brief contains 3,201 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 30, 2024

Respectfully submitted,

By: /s/ *JEAN KRASILNIKOFF*
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DECLARATION OF SERVICE

I, Ryan Sullivan, hereby declare: that I am over the age of eighteen years and am not a party to the within above-entitled action, that I am employed in the City and County of Los Angeles, that my business address is The State Bar of California, 180 Howard Street, San Francisco, CA 94105. On September 30, 2024, following ordinary business practice, I filed via the United States District Court, Central District of California electronic case filing system, the following:

STATE BAR DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO AMEND THIRD AMENDED COMPLAINT

Participants in the case who are registered CM/ECF users will be served.

See the CM/ECF service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California, on September 30, 2024.

/S/ RYAN SULLIVAN
Ryan Sullivan